

ESTATE OF RUBY RUTH
MALDONADO

: Order Returning Case to Administrative
: Law Judge
:
: Docket No. IBIA 01-12
:
: January 25, 2001

The above estate was referred to the Board of Indian Appeals (Board) as an interlocutory appeal by Administrative Law Judge William E. Hammett. By order dated November 8, 2000, the Board held that it would not address the matter unless and until it received information from a party clearly showing that there was a dispute over the interim rulings made by Judge Hammett.

The Board has received objections to the interim rulings from members of the family of Decedent Ruby Ruth Maldonado. In addition, it received, by facsimile, an objection from the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation). The Board concludes that there is an active dispute by the family members over Judge Hammett's interim rulings. Because of this conclusion, the Board finds that it need not address the question of whether the Yakama Nation's objection is properly before it.

At issue in this case is the question of whether the Confederated Tribes of the Warm Springs Reservation (Warm Springs Tribe) has authority to purchase certain land interests in Decedent's estate. Decedent's family members and the Yakama Nation contend that the Warm Springs Tribe does not have a right to purchase those interests. As an interim ruling, Judge Hammett held that he "does not have the authority to determine issues of tribal jurisdiction raised between two Indian Tribes but that such authority lies not within an administrative tribunal but is solely within the jurisdiction of an appropriate United States District Court." Interim Order at 3.

Based on the materials before the Board, it appears that whether the Warm Springs Tribe has the right to purchase the interests at issue here depends upon the proper construction of the Act of August 10, 1972, Pub. L. No. 92-377, 86 Stat. 530. Construction of this law is necessary in order for the Department to carry out its statutory and trust responsibilities to probate Decedent's estate. The Board believes that an Administrative Law Judge within the Department of the Interior has the authority to construe a statute in the course of carrying out

the Department's probate responsibility. It therefore holds that Judge Hammett should address the question of whether the Warm Springs Tribe has the right to purchase the interests at issue here. 1/

Judge Hammett's referral order also questioned whether he had the authority to order the Bureau of Indian Affairs (BIA) to conduct a sale of timber on lands held by Decedent's estate. In the absence of an order from the Judge requiring BIA to conduct such a sale, which would alter the status quo, the Board declines to address the issue as an interlocutory matter. As the Board discussed in Estate of Neal Kay Manuel, 13 IBIA 58, 59 (1984):

In order to conserve judicial resources, to expedite final resolution of cases, and to prevent the cost and delay of successive appeals, interlocutory appeals in both judicial and administrative forums are generally reserved for those extraordinary circumstances where prompt appellate consideration is essential, as, for example, in those situations in which the ruling or decision by the trial court or Administrative Law Judge threatens a party with immediate and serious irreparable harm which, as a practical matter, cannot be redressed on appeal. In those cases in which any error in the interlocutory ruling or decision, as well as any other error that might be alleged, can be considered and corrected on appeal, an interlocutory appeal is generally not appropriate.

According, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board returns this case to Judge Hammett for appropriate action in accordance with this decision. Any pleadings currently due from the parties should be filed with Judge Hammett.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

1/ If this matter is appealed to Federal court, and the court holds that the Department lacks this authority, the court will still have the benefit of the Department's construction of the statute, which could expedite final resolution of this estate by possibly preventing a remand to the Department.